



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
TOWN OF PURCELLVILLE  
BASHAM SIMMS WASTEWATER TREATMENT FACILITY  
VPDES Permit No. VA0022802**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Purcellville, regarding the Basham Simms Wastewater Treatment Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Basham Simms Wastewater Treatment Facility located at 221 South Nursery Avenue Purcellville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Purcellville.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0022802 which was issued under the State Water Control Law and the Regulation to the Town of Purcellville on May 13, 2015 and which expires on May 12, 2020.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as

amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Town" means the Town of Purcellville, a political subdivision of the Commonwealth of Virginia. The Town of Purcellville is a "person" within the meaning of Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Town owns and operates the Plant. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of the North Fork of Goose Creek in strict compliance with the terms and conditions of the Permit.
2. The Facility discharges to an unnamed tributary to North Fork Goose Creek that has been neither monitored nor assessed. North Fork Goose Creek is located approximately 1.27

miles downstream from this facility and the closest monitoring station is DEQ ambient and biological monitoring station 1aNOG005.69, at Route 722, approximately 5.2 miles downstream from this facility. The following is the water quality summary for this segment of North Fork Goose Creek, as taken from the 2014 Integrated Report: *E. coli* monitoring finds a bacterial impairment, resulting in an impaired classification for the recreation use. A fecal coliform TMDL for the North Fork Goose Creek watershed has been completed and approved. Biological monitoring finds a benthic macroinvertebrate impairment, resulting in an impaired classification for the aquatic life use. The wildlife use is considered fully supporting. The fish consumption use was not assessed.

3. On August 22, 2019, Town staff reported to DEQ that a release of a solution of sodium hypochlorite into the process flow and subsequent discharge from Outfall 001 at the Plant had caused a fish kill in the receiving stream.
4. On August 22, 2019, DEQ staff conducted an assessment of the receiving stream to determine the extent of the fish kill and the overall health of the receiving stream. DEQ staff observed approximately 150 to 200 dead fish in the area of the receiving stream, downstream from Outfall 001 for approximately 500 feet downstream. DEQ staff observed live fish further downstream where the receiving stream intersects with Franklins Ford Place.
5. The Town submitted additional information to DEQ on August 27, 2019, regarding the incident. This correspondence noted that incident occurred as a result of using sodium hypochlorite to perform a maintenance clean of filter membranes at the Plant and as a result of operator error. The Town believes that the operator opened the valves to one of the other trains in production that would have caused the chlorine to enter the final permeate stream prior to discharging to the stream.
6. In its August 27, 2019 response, the Town stated that since the incident, they have implemented a second operator checking with the operator in charge of the filter cleaning that the valves on the train being cleaned are the ones opened and all other train valves are in the closed position. The Town also noted that they will be purchasing a lock out valve device so that the operator will only get a key that matches the lock out device to the train that is being cleaned. In addition, the Town also contacted its SCADA manufacturer to see if a modification to the system could be made to lock out the valves for all other trains that are not being cleaned. The Town stated that all operators would receive new training on the changes implemented
7. NRO issued Notice of Violation No. W2019-09-N-0003 to the Town on September 23, 2019, for the unusual discharge that caused a fish kill.
8. On December 6, 2019, the Town reported to DEQ that an unauthorized discharge of sewage had occurred from a pump station within the Town's collection system on December 5, 2019. The Town reported that approximately 20,000 to 25,000 gallons of sewage had discharged for approximately 60 minutes to Jack's Run. The Town noted that the discharge occurred because the high level alarm failed to call the on call operator.

The Town also noted that the alarm had been tested on December 3, 2019, prior to the incident, and following the incident and was functioning properly. In a written report submitted to DEQ dated December 5, 2019, the Town noted that the alarm failure was still under investigation.

9. NOV No. W2020-01-N-0012 was issued to the Town on January 23, 2020 for this unauthorized discharge event.
10. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
11. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Part II.F of the Permit states that “except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0022802 and VAN010016.
15. The unnamed tributary of the North Fork of Goose Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. On October 31, 2019, Department staff met with representatives of the Town to discuss the violations, including the Town’s August 27, 2019, written response.
17. Based on the results of August 22, 2019 report from the Town, the August 22, 2019 DEQ site visit, documentation submitted to DEQ on August 27, 2019, and the December 6, 2019 report from the Town, the Board concludes that the Town has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, as described in paragraph C(3-15) above.
18. In order for the Town to complete its return to compliance, DEQ staff and representatives of The Town have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town and the Town agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$19,565.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The Town shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The Town declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the Town. Nevertheless, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Town has completed all of the requirements of the Order;
  - b. The Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Town certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29<sup>th</sup> day of May, 2020.



Thomas A. Faha Northern Regional Director  
Department of Environmental Quality



The Town of Purcellville voluntarily agrees to the issuance of this Order.

Date: 4-2-2020 By: Jason Didanick (Person), ASSISTANT Director of (Title) PUBLIC WORKS

Commonwealth of Virginia

City/County of LOUDOUN

The foregoing document was signed and acknowledged before me this 2<sup>ND</sup> day of APRIL, 2020, by JASON DIDANICK who is ASSISTANT PUBLIC WORKS of the Town of Purcellville, on behalf of the Town. DIRECTOR

Diana Lynn Hays  
Notary Public

7279810  
Registration No.

My commission expires: AUGUST 31, 2023

Notary seal:

DIANA LYNN HAYS  
NOTARY PUBLIC  
REG. #7279810  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES AUGUST 31, 2023

## **APPENDIX A SCHEDULE OF COMPLIANCE**

**The Town of Purcellville shall:**

**1. Unpermitted Discharge/Spill**

- a. Conduct TRC (Total Residual Chlorine) monitoring at the Outfall once every 2 hours for a 12-hour period following the use of sodium hypochlorite to clean the filter membranes at the Plant. TRC monitoring shall follow an approved methodology and all other criteria to produce valid data, and results shall be included with the monthly eDMR submittal as a separate attachment document. The aforementioned TRC monitoring shall continue until the Town's Permit is reissued.

**2. DEQ Contact**

Unless otherwise specified in this Order, The Town shall submit all requirements of Appendix A of this Order to:

**Attention Enforcement  
VADEQ- Northern Regional Office  
13901 Crown Court  
Woodbridge, VA 22193**